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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

Case No. R-2038

ANDREW ANTHONY HOLGUIN, JR.
PO Box 641
Rancho Mirage, CA 92270

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

Respiratory Care Practitioner
License No. 15772

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this First Amended Accusation and
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the
Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 21, 1992, the Respiratory Care Board issued
Respiratory Care Practitioner License No. 15772 to ANDREW ANTHONY HOLGUIN, JR.
(Respondent). The Respiratory Care Practitioner License expired on February 28, 2006, and has
not been renewed.

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3. In a Respiratory Care Board's Decision and Order effective March 23, 2006, in the Matter of the Accusation Against Andrew Anthony Holguin, Jr., Case No. R-2006, Respondent's Respiratory Care Practitioner License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of two (2) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This First Amended Accusation and Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer the provisions of the Respiratory Care Practice Act.”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“ . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation

1 of, or conspiring to violate any provision or term of this chapter or of any
2 provision of Division 2 (commencing with Section 500).

3 “. . .”

4 8. Section 492 of the Code states, in pertinent part:

5 “Notwithstanding any other provision of law, successful completion of any
6 diversion program under the Penal Code, or successful completion of an alcohol
7 and drug problem assessment program under Article 5 (commencing with Section
8 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
9 any agency established under Division 2 (commencing with Section 500) of this
10 code, or any initiative act referred to in that division, from taking disciplinary
11 action against a licensee or from denying a license for professional misconduct,
12 notwithstanding that evidence of that misconduct may be recorded in a record
13 pertaining to an arrest. . . .”

14 9. California Code of Regulations (CCR), title 16, section 1399.370, states,
15 in pertinent part:

16 “For the purposes of denial, suspension, or revocation of a license, a crime or act
17 shall be considered to be substantially related to the qualifications, functions or duties of
18 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
19 perform the functions authorized by his or her license or in a manner inconsistent with the
20 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
21 those involving the following:

22 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
23 abetting the violation of or conspiring to violate any provision or term of the Act.

24 “. . .”

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1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

3 "In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other
10 administrative, filing, and service fees."

11 12. Section 3753.1 of the Code states, in pertinent part:

12 "(a) An administrative disciplinary decision imposing terms of probation may
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs
14 associated with monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 13. Respondent is subject to disciplinary action under Code sections 3750(d),
18 3750(g), and CCR, title 16, section 1399.370(a), in that he was convicted of crimes substantially
19 related to the qualifications, functions, or duties of a respiratory care practitioner. The
20 circumstances are as follows:

21 **April 13, 2006**

22 A. On or about April 13, 2006, in the case entitled *The People*
23 *of the State of California v. Andrew Anthony Holguin*, Case No. INM164864,
24 before the Superior Court of California, County of Riverside (Indio), Respondent
25 was convicted on his own guilty plea of one count of use and under the influence
26 of a controlled substance, in violation of Health and Safety Code section
27 11550(a). The entry of judgment was deferred and Respondent was ordered to
28 enroll and complete in a drug treatment program.

1 B. The circumstances of the conviction are as follows: On or
2 about January 28, 2006, Respondent was arrested and charged with violating
3 Health and Safety Code section 11150(a) [under the influence of a controlled
4 substance]. Respondent admitted to smoking methamphetamine to the arresting
5 officer. A blood screen was performed on Respondent which tested positive for
6 amphetamine/methamphetamine.

7 C. On or about February 23, 2006, a Complaint was filed in
8 Superior Court of California, County of Riverside, charging Respondent with one
9 count of wilfully and unlawfully use and under the influence of a controlled
10 substance, said controlled substance not having been administered by and under
11 the direction of a person licensed by the State of California to prescribe and
12 administer controlled substances in violation of Health and Safety Code section
13 Health and Safety Code section 11550(a) [Count 1].

14 **June 29, 2006 Conviction**

15 D. On or about June 29, 2006, in the case entitled *The People*
16 *of the State of California v. Andrew Anthony Holguin*, Case No. INM164865,
17 before the Superior Court of California, County of Riverside (Indio), Respondent
18 was convicted on his own guilty plea of one count of violating Penal Code section
19 273.6, subdivision (a), in that he violated a protective order (as defined in section
20 6218 of the Family Code) and a restraining order (obtained pursuant to sections
21 527.6 and 527.8 of the Code of Civil Procedure).

22 E. The circumstances of the conviction are as follows: On or
23 about June 16, 2006, Respondent was arrested for violating a domestic violence
24 restraining order protecting his ex-wife by going to her home and demanding she
25 let him in.

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1 F. On or about June 19, 2006, a Misdemeanor Complaint was
2 filed in Superior Court of California, County of Riverside, charging Respondent
3 with one count of violating a protective order as defined in section 6218 of the
4 Family Code and an order obtained pursuant to sections 527.6 and 527.8 of the
5 Code of Civil Procedure, in violation of Penal Code section 273.6, subdivision
6 (a).

7 SECOND CAUSE FOR DISCIPLINE

8 (Use of a Controlled Substance)

9 14. Respondent is subject to disciplinary action under Code sections 3750.5(a)
10 and (b), CCR, title 16, section 1399.370(a), in that he used a controlled substance, to wit:
11 amphetamine/methamphetamine, as more particularly described in paragraph 13, above, which is
12 incorporated by reference as if fully set forth herein.

13 FIRST CAUSE TO REVOKE PROBATION

14 (Obey All Laws)

15 15. At all times after the effective date of Respondent's probation, Condition 5
16 stated:

17 "Respondent shall obey all laws, whether federal, state or local.
18 Respondent shall also obey all regulations governing the practice of respiratory
19 care in California.

20 "Respondent shall notify the Board in writing within 14 days of any
21 incident resulting in his arrest, or charges filed against, or a citation issued against
22 Respondent."

23 16. Respondent's probation is subject to revocation because he failed to
24 comply with Probation Condition 5, referenced above, in that in April 2006, he was convicted of
25 being under the influence of a controlled substance, and in June 2006, he was convicted of
26 violating a domestic violence restraining order.

27 A. Paragraph 13 is herein realleged as though fully set forth.

28 B. Respondent failed to notify the Board in writing within 14
days of the incidents resulting in his arrests and/or charges filed against him.

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“Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

“Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

“Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.”

20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows: On or about April 24, 2006, the Board sent a certified letter to Respondent directing him to appear at a meeting at the Glendale District Office of the Medical Board of California scheduled on May 9, 2006. The letter also directed him to complete the Board's biological fluid testing program enrollment forms to bring to the meeting. Respondent failed to appear at the scheduled meeting as directed.

FOURTH CAUSE TO REVOKE PROBATION

(Probation Monitoring Costs)

21. At all times after the effective date of Respondent's probation, Condition 8 stated:

“All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

“All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

“If Respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

“Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does

1 not preclude the Board from pursuing further disciplinary action. However,
2 Respondent understands providing evidence and supporting documentation of
financial hardship may delay further disciplinary action.

3 “In addition to any other disciplinary action taken by the Board, an
4 unrestricted license will not be issued at the end of the probationary period and the
respiratory care practitioner license will not be renewed, until such time all
5 probation monitoring costs have been paid.

6 “The filing of bankruptcy by Respondent shall not relieve the Respondent
of his responsibility to reimburse the Board for costs incurred.”

7 22. Respondent’s probation is subject to revocation because he failed to
8 comply with Probation Condition 8, in that, Respondent failed to pay his probation monitoring
9 fees and is in arrears in the amount of \$300.00.

10 FIFTH CAUSE TO REVOKE PROBATION

11 (Cost Recovery)

12 23. At all times after the effective date of Respondent’s probation, Condition
13 12 stated:

14 “Respondent shall pay to the Board a sum not to exceed the costs of the
investigation and prosecution of this case. That sum shall be \$476.00 and shall be
15 paid in full directly to the Board, in equal quarterly payments, within 12 months
from the effective date of this decision. Cost recovery will not be tolled.

16 “If Respondent is unable to submit costs timely, he shall be required
17 instead to submit an explanation of why he is unable to submit these costs in part
or in entirety, and the date(s) he will be able to submit the costs including
18 payment amount(s). Supporting documentation and evidence of why the
Respondent is unable to make such payment(s) must accompany this submission.

19 “Respondent understands that failure to submit costs timely is a violation
20 of probation, and submission of evidence demonstrating financial hardship does
not preclude the Board from pursuing further disciplinary action. However,
21 Respondent understands that providing evidence and supporting documentation of
financial hardship may delay further disciplinary action.

22 “Consideration to financial hardship will not be given should Respondent
23 violate this term and condition, unless an unexpected AND unavoidable hardship
is established from the date of this order to the date payment(s) is due.

24 “The filing of bankruptcy by the Respondent shall not relieve the
25 Respondent of his responsibility to reimburse the Board for these costs.”

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1 24. Respondent's probation is subject to revocation because he failed to
2 comply with Probation Condition 12, in that, Respondent failed to pay his quarterly cost recovery
3 payments of \$119 and is in arrears in the amount of \$238 as of September 23, 2006.

4 SIXTH CAUSE TO REVOKE PROBATION

5 (Valid License Status)

6 25. At all times after the effective date of Respondent's probation, Condition
7 14 stated:

8 "Respondent shall maintain a current, active and valid license for the
9 length of the probation period. Failure to pay all fees and meet Continuing
10 Education requirements prior to his license expiration date shall constitute a
violation of probation."

11 26. Respondent's probation is subject to revocation because he failed to
12 comply with Probation Condition 14, in that, Respondent failed to maintain a current and active
13 valid license in that his license expired on February 28, 2006, and has not been renewed.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

17 1. Revoking the probation that was granted by the Respiratory Care Board of
18 California in Case No. R-2006 and imposing the disciplinary order that was stayed thereby
19 revoking Respiratory Care Practitioner License No. 15772 issued to ANDREW ANTHONY
20 HOLGUIN, JR.;

21 2. Revoking or suspending Respiratory Care Practitioner License No. 15772,
22 issued to ANDREW ANTHONY HOLGUIN, JR.;

23 3. Ordering Andrew Anthony Holguin, Jr. to pay the Respiratory Care Board
24 the costs of the investigation and enforcement of this case, and if probation is continued or
25 extended, the costs of probation monitoring;

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4. Taking such other and further action as deemed necessary and proper.

DATED: November 16, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SD2006801034

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